The IVDS rules provide for the following bidding preferences:

(1) Installment payments available to all small businesses (including those owned by women and minorities);

(2) A 25% bidding credit available in each market only to winning bidders that are minority- or women-owned; and

(3) Tax certificates available to initial investors in minority- or women-owned businesses and to licensees which transfer their authorizations to minority- or female-owned businesses.[23]

The same considerations which led the Commission to implement installment payments in the IVDS service are present in the MDS context. As the Commission noted in the Fourth Report implementing IVDS bidding procedures, installment payments will decrease applicants' need to rely on private financing. Installment payments will not appreciably increase the risk of under-capitalization because of the relatively low cost of MDS build-out.

The Operators also support MDS bidding credits of 25 percent of the high bid for minority- and women-owned firms, regardless of their size.[24] This substantial credit will effectively encourage participation by minority- and women-owned firms, while requiring enough capital to ensure that only entities that are financially capable of constructing MDS facilities participate in the auctions.

The Operators support mechanisms for preventing unjust enrichment similar to those implemented in connection with the IVDS auctions. Licenses acquired through the use of bidding credits

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[23]See Fourth Report, ¶ 36.

[24]The Operators are aware that the standard under which minority preferences are given is the subject of a Supreme Court case heard this term. See Adarand Constructors v. Pena, Case No. 93-1841.

should be subject to forfeiture requirements such that entities that are not minority- or female-owned which are assigned or transferred licenses purchased through a bidding credit must reimburse the government for the amount of the bidding credit, plus interest at the rate imposed for installment financing at the time the license was awarded.

Finally, the Operators support the extension of the Commission's tax certificate policies to the MDS auctions.[25] Tax certificate policies such as those applied to the IVDS auctions have the potential to increase the availability of capital to minority- and women-owned companies seeking to enter the wireless cable market. As the Commission noted in its Fourth Report establishing IVDS auctioning procedures, investors in minority- and women-owned entities will be able to defer taxes on gains when their interests are sold. This tax certificate policy also will encourage MDS investors to seek minority- and female-owned buyers in post-auction sales, leading to increased diversity of ownership in the wireless cable business.

The Operators also support the Commission's rules to prevent unjust enrichment through its tax certificate policies. Applicants for tax certificates should be subject to careful review and enforcement. Further, as in the IVDS rules, a one-year holding

[25]The Commission recently proposed an expansion of its tax certificate policy. See Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities (Notice of Proposed Rule Making), MM Docket Nos. 94-149 and 91-140 (FCC 94-323), released January 12, 1995. The Operators support this effort to give minority- and women-owned entities increased access to financing.

requirement should apply to the transfer or assignment of MDS licenses obtained through the benefit of tax certificates.

Spectrum set-asides are not appropriate in the MDS context. Because of the numerous pre-existing licensees and permittees in the MDS service, the total authorized spectrum available for set-asides is small and the FCC's ability to equitably determine those licenses that should be subject to set-asides is impeded. Further, as the Commission has emphasized, the aggregation of a critical mass of channels is essential to creating a competitive wireless cable system. Setting aside particular channels in a market will only lead to fragmentation in a service which depends upon aggregation for competitive viability.

The Operators believe that the Commission's reasoning in not providing IVDS bidding preferences to rural telephone companies is equally applicable in the MDS context. The costs of MDS build-out are modest in comparison to the costs of telephone wire installation; thus, preferences are unnecessary to ensure participation of rural telephone companies in the MDS service. Furthermore, because wireless cable service first developed in sparsely populated areas in which it was not economically feasible for wired cable operators to establish service, preferences to rural telephone companies are not necessary to ensure that rural consumers receive the benefit of MDS service.

Conclusion

The Coalition of Wireless Cable Operators welcomes the Commission's further efforts to improve the efficiency of the Commission's MDS application process. The Commission's proposals, with the exceptions and refinements discussed herein, are improvements that should be adopted.

Respectfully submitted,

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SHREVEPORT WIRELESS CABLE TELEVISION PARTNERSHIP
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January 23, 1995

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